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JJS DEVELOPMENT, LLC d/b/a

9 JAN PRO CLEANING SYSTEMS OF LAS VEGAS

10 and JAN PRO FRANCHISING INTERNATIONAL, INC.

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 PEGGY CARRILLO,

14 Plaintiff,

15 v.

16 B & J ANDREWS ENTERPRISES,

17 LLC d/b/a BOULDER OAKS RV

18 RESORT, a Nevada limited liability
company; FIRST COLUMBIA

19 COMMUNITY MANAGEMENT,

INC., a Nevada corporation;

20 BOULDER OAKS COMMUNITY

ASSOCIATION, Nevada non-profit

21 corporation; JJS DEVELOPMENT,

22 LLC d/b/a JAN PRO CLEANING

SYSTEMS OF LAS VEGAS, a

23 Nevada limited liability company;

JAN-PRO FRANCHISING

24 INTERNATIONAL, INC., a Georgia

25 corporation; DOES I-X; and ROE

CORPORATIONS I-X, inclusive,

26 Defendants.

27 And all related matters.
28

Case No.: 2:11-cv-01450-MMD-CWH

DEFENDANT, JAN PRO
FRANCHISING
INTERNATIONAL, INC.'S REPLY
TO PLAINTIFF'S OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT PURSUANT TO
FED.R.CIV.P. 56



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COMES NOW, Defendant, JAN PRO FRANCHISING INTERNATIONAL, INC.
by and through its undersigned attorney of record, LEW BRANDON, JR., ESQ., of the
MORAN LAW FIRM, LLC, and hereby submits the following Reply to Plaintiff's
Opposition to Motion for Summary Judgment.

This Reply is made and based upon the Points and Authorities submitted herewith,
together with the papers and pleadings on file herein, and oral arguments at the time of
Hearing.

DATED this 4th day of January, 2013.

MORAN LAW FIRM, LLC.

/s/ Lew Brandon, Jr., Esq.
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INC.

POINTS AND AUTHORITIES

I.
FACTS

As this Court is aware, this matter arises from an alleged incident involving Peggy
Carrillo (hereinafter "Plaintiff"), occurring on or around May 13, 2010. As a result of this
incident, Plaintiff filed the instant lawsuit claiming negligence against the cleaning
company who performed cleaning services of the subject bathroom, JJS Development,
LLC d/b/a Jan-Pro Cleaning Systems of Las Vegas (hereinafter "Franchisee"), and its



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parent company, Jan Pro Franchising International, Inc. (hereinafter as “Defendant” and/or “Franchisor”). As Plaintiff has no viable claim against the parent company, Jan Pro Franchising International, Inc., Defendant filed the instant Motion for Summary Judgment on the basis that Plaintiff could not “piece the corporate veil.”

Plaintiff has opposed Defendant’s Motion arguing that because an agency relationship exists between JJS Development, LLC d/b/a Jan-Pro Cleaning Systems of Las Vegas, and its parent company, Jan Pro Franchising International, Inc., there is an issue of genuine issue of material fact and Defendant’s Motion should be denied. *See Plaintiff’s Opposition on file herein.*

Defendant, JAN PRO FRANCHISING INTERNATIONAL, INC. now moves this Court for Summary Judgment.

II. STANDARD FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, “summary judgment is proper ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” Tate v. Lau, 865 F.Supp. 681, 685 (D. Nev. 1994) (citing Fed. R. Civ. P. 56(c)). A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. *Id.* at 686.¹ In a diversity case, substantive summary judgment issues are determined by state law. *See*

¹ *See also Admiralty Fund v. Jones*, 677 F.2d 1289, 1293 (9th Cir. 1992); Posadas v. City of Reno, 109 Nev. 448, 851 P.2d 438 (1993).



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1 Kusmirek v. MGM Grand Hotel, Inc., 73 F. Supp. 2d 1222, 1224 (D. Nev. 1999) (citing
2 Bank of California v. Opie, 663 F.2d 977, 980 (9th Cir. 1981)).^{2,3}

3 The party moving for summary judgment has the initial burden of showing the
4 absence of a genuine issue of material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144
5 (1970).⁴ The moving party meets this burden by showing an absence of evidence to
6 support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).
7 Once said initial burden is met, the burden shifts to the non-moving party to set forth
8 specific facts demonstrating that there is a genuine issue for trial. Anderson v. Liberty
9 Lobby, Inc., 477 U.S. 242, 250 (1986); *see also* Celotex Corp., 477 U.S. 317 (holding the
10 non-moving party must set forth "specific facts showing that there is a genuine issue for
11 trial"). "[A] complete failure of proof concerning [any one] essential element of a non-
12 moving party's case, necessarily renders all other facts immaterial." Celotex Corp., 477
13 U.S. at 322-23.⁵ The non-moving party, or the party opposing summary judgment, must
14 come forth with evidence in the form of affidavits, depositions, etcetera, which set forth
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19 ² The Nevada Supreme Court has adopted the standard for summary judgment as set forth in the United
20 States Supreme Court's decisions in Anderson v. Liberty Lobby, Inc. and Matsushita Electric Co v. Zenith
21 Radio, which limits the nonmoving party from artificially creating a genuine issue of material fact in order to
22 avoid summary judgment. *See* Wood v. Safeway, Inc., 121 Nev. 724, 730-731 (2005) (citing Anderson v.
23 Liberty Lobby, Inc. 477, U.S. 242 (1986); Matsushita Electric Co v. Zenith Radio, 475 U.S. 574 (1986)). In
24 Wood, the Nevada Supreme Court held that defendants may not "create" a genuine issue of material fact
25 simply by making general allegations and conclusory statements. *Id.* Rather, "[t]he nonmoving party must,
26 by affidavit or otherwise, set forth facts demonstrating the existence of a genuine issue for trial or have
27 summary judgment entered against him. The nonmoving party is not entitled to build a case on the
28 gossamer threads of whimsy, speculation, and conjecture." *Id.* at 732.

³ The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts
before the court. Northwest Motorcycle Ass'n v. U.S. Dep't of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994).

⁴ *See also* Metro Indus., Inc. v. Sammi Corp., 82 F.3d 839, 847 (9th Cir. 1996); Butler v. Bogdanovich, 101
Nev. 449, 705 P.2d 662 (1985); Intermountain Veterinary Medical Ass'n v. Kiesling-Hess Finishing Co., 101
Nev. 107, 706 P.2d 137 (1985); Main v. Stewart, 109 Nev. 721, 857 P.2d 755 (1993).

⁵ Summary judgment shall be entered "against a party who fails to make a showing sufficient to establish the
existence of an element essential to that party's case, and on which that party will bear the burden of proof at
trial." Raymond v. Albertson's Inc., 38 F. Supp. 2d 866, 868 (D. Nev. 1999) (citing Celotex, 477 U.S. at
322).



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specific facts; the opposing party cannot rest on mere pleadings. Aldabe v. Adams, 81 Nev. 280, 402 P.2d 34 (1965).⁶ Only evidence that might be admissible at trial may be considered by a trial court in ruling on a motion for summary judgment. Beyene v. Coleman Security Services, Inc., 854 F.2d 1179, 1181 (9th Cir. 1988). Conclusory or speculative testimony, as well as uncorroborated and self-serving testimony, without more, will not create a genuine issue of material fact, necessary to preclude summary judgment. Villiarimo v. Aloha Island Air Inc., 281 F.3d 1054, 1061 (9th Cir. 2002).⁷

III. LEGAL ARGUMENT

Plaintiff's Complaint alleges no genuine issue of material fact with regards to Jan Pro Franchising International, Inc. and therefore, summary judgment is appropriate. The only way Jan Pro Franchising International, Inc. may be held liable to Plaintiff is if Plaintiff were to pierce the corporate veil by use of the alter-ego doctrine. Plaintiff's Opposition does not address one single argument made in Defendant's underlying Motion and as such, there is no basis for piercing the corporate veil in this matter. Therefore, Defendant, Jan Pro Franchising International, Inc.'s Motion for Summary Judgment should be granted.

A. **PLAINTIFF WRONGFULLY ARGUES THAT BECAUSE THERE IS AN AGENCY RELATIONSHIP BETWEEN JAN PRO FRANCHISING INTERNATIONAL, INC. AND JJS DEVELOPMENT d/b/a JAN PRO CLEANING SYSTEMS OF LAS VEGAS THAT SUMMARY JUDGMENT IS IMPROPER**

⁶ See also Ferriera v. P.C.H. Inc., 105 Nev. 305, 774 P.2d 1041 (1989).

⁷ See also Martinez v. City of Los Angeles, 141 F.3d 1373, 1378 (9th Cir. 1998); Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio, 475 U.S. 574, (1986); Anheuser-Busch, Inc. v. Natural Beverage Distribs., 69 F.3d 337, 345 (9th Cir. 1995); Hahn v. Sargent, 523 F.2d 461, 467 (9th Cir. 1975).



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1 Plaintiff's entire Opposition is one, long tangential argument that because Jan Pro
 2 Franchising International, Inc. imposed some control and operational guidelines upon the
 3 franchisee, JJS Development, LLC d/b/a Jan Pro Cleaning Systems of Las Vegas, that an
 4 agency relationship exists through which it may be held liable for the negligent conduct of
 5 the franchisee. However, Plaintiff's entire Opposition neglects the fact that Franchisee is a
 6 Limited Liability Company (hereinafter "LLC"), and thus afforded different legal
 7 protections than just a simple agency relationship, as Plaintiff suggests. Bonanza Hotel Gift
 8 Shop v. Bonanza No. 2, 95 Nev. 463 (Nev. 1979).

9
 10 In her Opposition, Plaintiff goes to extreme length to analyze and dissect the
 11 Franchisee/Franchisor agreements and operational requirements in order to show that
 12 Franchisor "exerted substantial control over" the Franchisee, and therefore an agency
 13 relationship existed at the time of Plaintiff's incident. *See Plaintiff's Opposition on file*
 14 *herein*. For support, Plaintiff cites inapplicable and distinguishable case law, all from
 15 California. In particular, Plaintiff's main support comes from Kutcha v. Allied Builders
 16 Corp., 21 Cal.App.3d 541, 98 Cal.Reptr. 588 (Ct. App. 1971), which involves an agency
 17 relationship where plaintiff's main cause of action was for fraud and the defendant was an
 18 individual, not a LLC. However, all of the case law cited by Plaintiff for support has no
 19 authority over Nevada proceedings, and the cited case law was premised on a cause of
 20 action distinguishable from the facts at bar. As such, Plaintiff's Opposition that an agency
 21 relationship existed is nothing more than a smoke screen and a red herring to divert the
 22 Court's attention away from the fact that Franchisee was a LLC.

23
 24 **B. PLAINTIFF'S OPPOSITION PRESENTS ZERO EVIDENCE**
 25 **NEEDED TO PIERCE THE CORPORATE VEIL, AS REQUIRED BY**
 26 **NEVADA LAW**

27 Regardless of the evidence that Plaintiff presents to show that Defendant required
 28 strict operational guidelines of Franchisee, Plaintiff presents zero evidence to show that



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1 Franchisee violated any of the requisites of the alter-ego doctrine, which is the only way to
 2 pierce the corporate veil and hold Defendant liable for the Franchisee's actions in Nevada.

3 In Nevada, a parent corporation is not liable for the wrongs of a wholly owned
 4 subsidiary, with the exception of when the "alter-ego doctrine" is used to pierce the
 5 corporate veil and impose liability on the parent for the failure of the subsidiary.⁸ Bonanza
 6 Hotel Gift Shop v. Bonanza No. 2, 95 Nev. 463 (Nev. 1979). The basic requisites for the
 7 application of the doctrine of alter ego have been well established:

8 (1) The corporation must be influenced and governed by the person asserted to be
 9 its alter ego;

10 (2) There must be such unity of interest and ownership that one is inseparable from
 11 the other; and

12 (3) The facts must be such that adherence to the fiction of a separate entity would,
 13 under the circumstances, sanction a fraud or promote injustice.⁹

14 Id. at 466.

15 The corporate veil may only be pierced when the protections provided by the
 16 corporate form are being **abused**. LFC Mktg. Group, Inc. v. Loomis, 116 Nev. 896, 903
 17 (Nev. 2000). (Emphasis added). Courts have found this to be the case when factors such as
 18 commingling of corporate funds or properties, exclusive control by the parent company, or
 19 demonstration of prejudice to creditors are present. Bonanza Hotel Gift Shop, 95 Nev. at
 20 466.

21
 22
 23
 24 ⁸ See also, Lipshie v. Tracy Inv. Co., 93 Nev. 370 (Nev. 1977); City of Fairbanks v. Amoco Chem. Co., 1995
 25 U.S. App. LEXIS 736 (9th Cir. 1995).

26 ⁹ As to the threshold element, a disregard of corporate formalities or a serious abuse of the corporate identity
 27 can be established by a number of methods including (1) commingling of funds between the alter ego entities,
 28 (2) parent's treating of the subsidiary's assets as its own, (3) subsidiary's owning less than an adequate amount
 of assets to carry on its business, and (4) the presence of interest-free loans taken from the corporation.
Seymour v. Hull & Moreland Eng'r, 605 F.2d 1105, 1111 (9th Cir. 1979).



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1 In the facts at bar, Plaintiff goes to exhaustive length to try to persuade this Court
 2 that Defendant was exercising extreme control over Franchisee. *See Plaintiff's Opposition*
 3 *on file herein*. However, most of these factors Plaintiff provides regard providing a
 4 guarantee of the quality of Franchisee's work, the right to inspect the Franchisee's work,
 5 providing a training program to Franchisee, and standards with regards to use of the
 6 corporate logo and information. *See Id.* Yet, Plaintiff provides no concrete proof of any of
 7 the above three (3) factors that would be sufficient to pierce the corporate veil and hold
 8 Defendant liable for Franchisee's actions. JJS Development, LLC d/b/a Jan Pro Cleaning
 9 System is a wholly and independently owned franchisee of Jan Pro Franchising
 10 International, Inc. and therefore, Defendant cannot be liable without a showing of sufficient
 11 evidence by Plaintiff to warrant piercing the corporate veil.
 12

13 As Plaintiff has presented no evidence to prove that Franchisee is abusing the
 14 protections afforded to it by its corporate form, that Franchisee is undercapitalized, that the
 15 Franchisee and Franchisor have commingled funds, or that Franchisor has failed to observe
 16 corporate formalities, there is no basis for piercing the corporate veil.
 17

18 **IV.**

19 **CONCLUSION**

20 Plaintiff has erroneously sued JAN PRO FRANCHISING INTERNATIONAL,
 21 INC. under the false assumption that JAN PRO FRANCHISING INTERNATIONAL,
 22 INC. would have any involvement and/or liability in this matter. Plaintiff's Opposition
 23 regarding summary judgment provided exactly zero points rebuttal the need to pierce the
 24 corporate veil, as such summary judgment is appropriate.
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1 Based upon the foregoing, Defendant, JAN PRO FRANCHISING
2 INTERNATIONAL, INC. respectfully requests that this Honorable Court grant its Motion
3 for Summary Judgment.

4 DATED this 4th day of January, 2013.

5
6 **MORAN LAW FIRM, LLC.**

7
8 /s/ Lew Brandon, Jr., Esq.

9 **LEW BRANDON, JR., ESQ.**

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14 JJS DEVELOPMENT, LLC d/b/a

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16 and JAN PRO FRANCHISING INTERNATIONAL,
17 INC.



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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on January 4, 2013, I served a true and correct copy of the foregoing **DEFENDANT, JAN PRO FRANCHISING INTERNATIONAL, INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED.R.CIV.P. 56** through the Court's ECF electronic filing system:

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